FILED
DEC 29 1981
ALEXANDER L. STEVAS,
CLERK

No. 81-546

In the Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STATES OF AMERICA,
Appellant

v.

MARATHON PIPELINE CO.

and

NORTHERN PIPELINE CONSTRUCTION CO.

No. 81-150

NORTHERN PIPELINE CONSTRUCTION CO.,
Appellant

v.

MARATHON PIPELINE CO.

and

UNITED STATES OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JOINT APPENDIX

JURISDICTIONAL STATEMENTS FILED JULY 17, 1981 AND
SEPTEMBER 16, 1981

PROBABLE JURISDICTION ENDED NOVEMBER 9, 1981

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RELEVANT DOCKET ENTRIES

Date	Nr.	Bankruptcy Proceeding Record
3-25-80		Complaint of Northern Pipeline Construction Co., Debtor, vs. Marathon Pipeline, Co. This is an action to enforce claims for money due under written contracts; to recover damages for breach of warranty and misrepresentation, etc. (see complaint)
3-25-80		Issued Summons and Notice of Pre-Trial, filed. Hearing: *May 7, 1980 at 10:00 a.m. in St. Paul.*
4- 1-80		Affidavit of Service re Summons and Notice of Pre-Trial, filed.
4-22-80		Stipulation extending time to answer, file motions or otherwise appear to *May 12, 1980* and continuing Pre-Trial to *May 22, 1980 at 10:00 a.m. in St. Paul,* filed.
4-22-80		Order approving Stipulation, filed.
5-12-80		Notice of Motion and Motion of Defendant, Marathon Pipeline Company to Dismiss or Alternatively to Abstain or Transfer the Proceeding to the Bankruptcy Court of the United States District Court for the Western District of Kentucky, filed.
		Hearing: *May 22, 1980 at 10:00 a.m. in St. Paul*
5-12-80		Affidavit of Richard G. Stein in support of Motion to Dismiss, filed.
5-14-80		Affidavit of Service re Notice of Motion, Motion and Affidavit of Richard G. Stein, filed.
5-14-80		Section of Exhibit D to the Affidavit of Richard G. Stein which was inadvertently omitted with affidavit of service, filed.

Date	Nr.	Bankruptcy Proceeding Record
5-20-80		Hearing on Motion to Dismiss, etc. removed from calendar per request of atty. Robert Atmore.
5-22-80		Memorandum of Defendant, received.
5-22-80		Pre-Trial hearing came on as scheduled. Hearing on Motion set for *June 23, 1980* at 10 a.m.
6-19-80		Memorandum of Plaintiff, received.
6-19-80		Affidavit of John L. Devney, filed.
6-19-80		Affidavit of Vance Norgaard, filed.
6-20-80		Hearing on Motion came on as scheduled. Matter to be taken under advisement. Proceedings recorded.
9- 9-80		Intervening Brief of the United States, filed.
9- 9-80		Motion of The United States of America to Intervene, filed.
9-10-80		Order granting motion to Intervene, filed. Certificate of Mailing, filed.
11-17-80		Memorandum and Order, filed. (this is incorrect and it was sent to all interested parties. A new Memorandum and Order to be filed.)
11-17-80		Memorandum and Order, filed. Certificate of Mailing, filed.
11-28-80		Application for Leave to Appeal filed with the U.S. District Court. (copy in our
3-27-81		Certified copy of Judge Miles Lord's Order granting leave to appeal, filed.
4-27-81		Copy of Order of Judge Miles Lord of April 23, 1981, filed.
11-28-80	1	APPLICATION FOR LEAVE TO APPEAL. Assigned to Judge, #761, Vol. IV on the Master Civil.

Date	Nr.	Bankruptcy Proceeding Record
3- 6-81	2	ORDER (Lord, J) that the request of Marathon Pipeline for leave to appeal the jurisdictional decision of Bankruptcy Referee Connelly is denied; the matter can be raised on appeal after the issuance of a final order from the Bankruptcy Court dated: 3-5-81
	3	NOTICE TO COUNSEL
3-10-81	4	ORDER (Lord, J) that this Court's Order of March 5, 1981, be amended by striking the word "Referee" on page 1, line 6 and page 2, line 16 and inserting the word "Judge" in both places.
	5	NOTICE TO COUNSEL.
3-16-81	6	NOTICE AND MOTION OF PLTF. FOR RECONSIDERATION OF THE ORDER OF THIS COURT DATED 3-5-81, ret. 3-26-81 at 10:00 A.M.
3-26-81	7	MINUTES OF PROCEEDINGS (Lord, J) (Rafel, R) re: pltf's motion for reconsideration of the order of this court dated 3-5-81—Granted. Judge will issue an Order in a few days without any further briefs.
	8	ORDER (Lord, J) that the request of Marathon Pipeline for leave to appeal the jurisdictional decision of Bankruptcy Judge Connelly is granted. 28 U.S.C. § 1334(b).
	9	NOTICE TO COUNSEL.
4-23-81	10	ORDER (Lord, J) that the adversary proceeding instituted by Northern Pipeline Construction Co. against Marathon Pipeline pursuant to the provisions of the Bankruptcy Code is dismissed. It Is Further Ordered That a stay of the provisions of this Order is granted pending appeal.

Date	Nr.	Proceedings
	11	JUDGMENT That the adversary proceeding instituted by Northern Pipeline Construction Co. against Marathon Pipeline pursuant to the provisions of the Bankruptcy Code is dismissed.
	12	NOTICE TO COUNSEL.
5-19-81	13	UNITED STATES OF AMERICAN'S APPEAL TO THE U.S. SUPREME COURT FROM THE JUDGMENT ENTERED ON 4-23-81. Mailed certified copy of Notice, along with 2 certified copies of docket entries to Alexander Stevas, Clerk, U.S. Supreme Court, 1 First St. NE, Washington, D.C. 20543.
5-20-80	14	NORTHERN PIPELINE CONSTRUCTION CO.'S NOTICE OF APPEAL TO THE U.S. SUPREME COURT FROM THE ORDER ENTERED ON 4-23-81. Mailed certified copy of Notice, along with 2 certified copies of docket entries to Alexander Stevas, Clerk, U.S. Supreme Court, 1 First St. NE, Washington, D.C. 20543.
7- 9-81		REPORTER'S NOTES, Re: Motion on 3-26-81 in Mpls Box R-81-9 (Rafel-R).
7-27-81	15	MEMORANDUM (Lord, J) re: Findings of Fact and Conclusions of Law for Order of 4-23-81. (Dated 7-24-81).
	16	NOTICE TO COUNSEL.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In Proceedings for a Reorganization Under Chapter 11

Case No. 3-80-66

ADVERSARY PROCEEDING NUMBER 800042

In the Matter of:

NORTHERN PIPELINE CONSTRUCTION CO., DEBTOR

NORTHERN PIPELINE CONSTRUCTION CO., PLAINTIFF

vs.

MARATHON PIPELINE COMPANY, DEFENDANT

All documents regarding this matter must be identified by *both* adversary and bankruptcy case numbers.

COMPLAINT

Plaintiff and Debtor, Northern Pipeline Construction Co., by counsel, and for its Complaint, states as follows:

THE PARTIES

1. Plaintiff Northern Pipeline Construction Co. (hereinafter referred to as "Northern") was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Minnesota with its principal place of business at 1800 West Highway 13, Burnsville, Minnesota. Northern was and now is engaged in the business of constructing oil and gas pipelines and at all

pertinent times hereto was duly authorized to do business in the State of Kentucky.

2. Defendant Marathon Pipeline Company (hereinafter referred to as "Marathon") was and now is a corporation duly organized and existing under the laws of the State of Delaware with principal places of business in Findlay, Ohio and Martinsville, Illinois. Marathon, among other things, is engaged in the business of owning and operating petroleum products, pipelines and related facilities.

THE CLAIMS

3. This is an action to enforce claims for moneys due and owing under written contracts, to recover damages for breaches of contract and warranty, misrepresentations and economic coercion and duress, to recover compensation for changes, extras and additional work either as authorized changes to the contract, modifications of the contract, or upon *quantum meruit*, and to recover consequential damages.

JURISDICTION

4. Federal jurisdiction is based upon 28 U.S.C. § 1471.

FIRST CLAIM FOR RELIEF

(*Breach of Contract and Warranty—Misrepresentation*)

5. During September 1977, Marathon invited construction bids for construction of approximately 2.0 miles of two twelve-inch pipelines to Texaco Company's Louisville terminal, with one twelve-inch pipeline extending 1.4 more miles to Louisville Refining Company's refinery and approximately 6.0 miles of a sixteen-inch pipeline to Sun Oil Company's terminal (hereinafter referred to as the "Project"). Contract plans and specifications were submitted by Marathon to Northern during September, 1977, for the purpose of enabling and inducing Northern to:

(a) Submit a bid for the contract work;
(b) Execute the contract work;

(c) Undertake the performance of the contract work; and

(d) Perform the contract work.

6. As part of the invitation for bids and as part of the plans and specifications submitted by Marathon to Northern, Marathon warranted, represented and agreed that:

(a) The plans and specifications and other proposal data were competently and accurately prepared.

(b) The plans and specifications and other proposal data were in all things adequate, sufficient and proper for use in the construction of the Project under the conditions to be encountered at the work site.

(c) Each item of information disclosed in the proposal data and plans and specifications was sufficiently accurate and complete to enable Northern to compute accurately the cost to Northern of the construction of the Project, to compute a reasonable profit therefor and compute the total amount of Northern's bid.

(d) The site conditions and contract requirements were such as would permit Northern to complete successfully all of the contract work in accordance with the plans and specifications and with the expenditure of time indicated and specified for the completion of the work.

(e) The plans and specifications provided in all things sound and feasible components and directions for completion of the contract under site conditions.

(f) Changes in the work and in the design of the work would be made only upon prior notice to Northern and such changes would be accomplished in timely fashion by giving written change orders or supplemental agreements.

(g) Marathon would give Northern prompt equitable time adjustment by time extension and price increases for changes in the work or in the design of the work or for changed conditions and extra work involved in the project work and testing and that changes would be

promptly issued and would contain adequate and suitable directions for completing the contract work.

(h) Marathon would give Northern a prompt notice to proceed with construction, together with prompt issuance of contract documents and Northern would be permitted to continue its work throughout the construction without interruption, disruption or delay of or interference with their planned schedules and sequence of the work.

(i) Inspections by Marathon would be competently, fairly and promptly made and that additional compensation would be paid where ..... (illegible) ..... in design or deficient owner-supplied materials.

(j) Marathon would, in good faith and in a timely fashion, stake, supervise, administer, coordinate and facilitate performance of the contract without hindering, interfering with, delaying, deceiving or dominating Northern.

(k) Marathon-supplied materials would be sound, suitable and fit for intended use without the need for repair by Northern.

7. Northern reasonably relied upon the aforesaid warranties and representations and Northern was induced thereby to submit the bid to Marathon to enter into the contract and to undertake performance thereof. Northern submitted a bid in an amount sufficient to compensate Northern for the cost of the construction as said cost was made to appear by Marathon from the plans and specifications, together with a reasonable profit for the performance of the contract work. Upon award by Marathon, Northern and Marathon entered into a contract dated October 6, 1977 for the project work; however, Northern did not receive an executed contract until on or about October 24, 1977.

8. Northern has completed all of its obligations under its contract with Marathon.

9. Marathon breached all of the aforesaid warranties and agreements and made misrepresentations in that, among other things:

(a) The plans and specifications and other proposal data were not completely and accurately prepared but were in truth and in fact incomplete, deficient, inadequate and insufficient.

(b) The plans and specifications and other proposal data were insufficient and unsuitable for use in the construction of the Project.

(c) The information disclosed in the proposal, plans and specifications was not sufficiently accurate and complete to enable Northern to compute accurately the cost to Northern of the construction of the Project and, thus, was not suitable for the computation of its bid.

(d) The site conditions and contract requirements were not such as would permit Northern to successfully complete its contract in accordance with the plans and specifications and with the expenditure of time indicated and specified for completion of the project.

(e) The plans and specifications did not provide in all things sound and feasible components and directions for completion of the contract under the site conditions.

(f) Changes in the contract and design were made without prior notice to Northern and were not the subject of timely written change order or supplemental agreement.

(g) Marathon did not give Northern prompt and equitable adjustment by time extension and price increases for changes, changed conditions and extra work, nor were change orders promptly issued.

(h) Northern was not permitted to continue its work without interruption, disruption or delay of or interference with its planned schedule and sequence of the work.

(i) Inspections were not competently, fairly and promptly made, nor was additional compensation paid where extra cost was necessitated by errors in design or deficient owner-supplied materials.

(j) Marathon did not, in good faith and in a timely fashion, stake, supervise, coordinate and facilitate the performance of the contract work without hindering, interfering with, delaying, deceiving or dominating Northern.

(k) Marathon-supplied materials were not sound, suitable and fit for their intended use without extensive repairs by Northern.

10. As a result of Marathon's breaches of warranty and agreements and misrepresentations, Northern has suffered damages in an amount presently estimated to be $1,474,602.44.

SECOND CLAIM FOR RELIEF

(Acceleration)

11. Realleges and incorporates by reference herein all of the foregoing paragraphs as if specifically stated.

12. After Northern's bid and receipt of Marathon's notice of intent to award, Marathon unilaterally advanced the completion date of the project in breach of its warranties, representations and agreements, thereby wrongfully accelerating Northern's performance.

13. Northern attempted to comply with Marathon's demand for the accelerated completion date and staffed the Project with men and equipment far in excess of those anticipated at the time of its bid.

14. Almost immediately after commencement of construction, weather conditions occurred at the job site, including but not limited to heavy rains far beyond the average precipitation for said time period, together with snow accumulations in excess of the 100-year average.

15. Northern was confronted with such severe weather, water, soil and other conditions affecting substantially all of the Project which, when coupled with Marathon's wrongful order to accelerate the completion date and refusal to grant time extensions, resulted in damages arising from significantly enlarged numbers of

laborers and equipment either standing idle at the job site waiting for site conditions to improve or working at rates of productivity far below those anticipated at the time of the bid.

16. As a result of Marathon's wrongful orders to accelerate and its refusal to grant time extensions under the site conditions previously described, Northern was forced to perform substantial portions of the work under unanticipated winter conditions and changed conditions.

17. As a result of Marathon's breach of wrongful acceleration of the contract and refusal to grant time extensions in light of site conditions, Northern has suffered damages in an amount presently estimated to be $1,474,602.44.

THIRD CLAIM FOR RELIEF

(*Force Majeure*)

18. Realleges and incorporates by reference herein all of the foregoing paragraphs as if specifically stated.

19. The contract provides with respect to "general conditions, force majeure":

> Neither contractor nor company shall be under obligations or subject to any liability for failure to carry out respectively the terms and provisions of this contract, during the time and to the extent, that such failure be due solely to force majeure. The party affected by such force majeure must give notice and full particulars of the force majeure in writing or by telegram, to the other party as soon as possible after the occurrence of the cause relied on. The obligation of the party giving such notice of force majeure shall be so suspended during the continuance of any inability so caused. Such inability shall not be a breach of this contract and the same party shall not be liable for damages or otherwise on account thereof, provided notice as herein set forth is given.

The term "force majeure," as used herein, shall mean acts of God, earthquakes, fire, flood, malicious mischief, insurrection, riot, strikes, lockouts, breakouts, picketing, labor disturbances, public enemy, war (declared or undeclared), landslides, washouts, explosions, epidemics, compliance with any federal, state or municipal laws, or with any regulation, order, rule, recommendation, request (including but not limited to priority, rationing or allocation orders or regulations) of any governmental agencies or authorities or representatives of any government (foreign or domestic) acting under claim or color of authority, failure to obtain permits required by federal, state or municipal law, inability of company to obtain materials or rights of way, total or partial failure or loss or shortage of all or any part of transportation facilities ordinarily available to and used by a party hereto in the performance of obligations imposed by this agreement, or any cause whatsoever beyond the reasonable control of either party hereto, whether similar to or dissimilar from the causes herein enumerated.

It is, however, expressly agreed that time is of the essence to this contract and that every reasonable effort will be made by the company and the contractor to avoid delay or suspension of any of the work to be performed hereunder. The contractor expressly agrees to make every reasonable effort, to the satisfaction of the company, to avert or settle any strikes or other labor difficulties which may be threatened by or occur among its employees, the employees of any subcontractors or third parties.

20. Immediately after commencement of the project work, Northern was confronted with such severe weather, water, soil and other conditions affecting substantially all of the Project as to constitute "force majeure."

21. Northern notified Marathon of the existence of the force majeure condition but Marathon wrongfully

refused to permit Northern to suspend the work but ordered Northern under wrongful threat of termination to proceed in the face of force majeure conditions at enormous cost to Northern and only after a substantial period of time had passed did Marathon acknowledge the existence of force majeure conditions and permit a suspension of the work. However, upon resumption of the work, Marathon again forced Northern to work under force majeure conditions.

22. As a result of Marathon's wrongful refusal to permit suspension of the work, Northern was forced to perform under unanticipated winter conditions and changed conditions, all of which continued after resumption of the work following suspension.

23. As a result of Marathon's wrongful refusal to acknowledge the existence of force majeure conditions, Northern suffered damages in an amount presently estimated to be $1,474,602.44.

FOURTH CLAIM FOR RELIEF

(*Change Orders*)

24. Realleges and incorporates by reference herein all of the foregoing paragraphs as though specifically stated.

25. The actions and orders by Marathon requiring Northern to continue performance of the contract work during the period when Northern was authorized to suspend work due to conditions beyond its control constitute either actual or constructive change orders which entitled Northern to payment of all extra costs and extensions of time resulting from performance in accordance with such change orders.

26. Marathon has wrongfully refused to acknowledge the actual or constructive change orders and has failed to pay Northern for its extra costs arising out of such changes. As a result, Northern has suffered damages in an amount presently estimated to be $1,474,602.44.

FIFTH CLAIM FOR RELIEF

(Quantum Meruit)

27. Realleges and incorporates by reference herein all of the foregoing paragraphs previously stated as though specifically set forth.

28. The actions and orders by Marathon required Northern to continue performance of the work under circumstances and conditions which made performance of the contract a practical impossibility and except by expenditure of time, efforts and money far in excess of that which would have been required under the contract conditions reasonably understood and anticipated. As a result, Northern is entitled to be compensated for the fair and reasonable value of such extra work and expense in an amount presently estimated to be $1,474,602.44.

SIXTH CLAIM FOR RELIEF

(Economic Coercion and Duress)

29. Realleges all of the allegations set forth in the foregoing paragraphs as though specifically stated.

30. The custom and practice in the private pipeline construction industry is that jobs such as this Project are made available to contractors for bid by invitation of the owner only.

31. In addition to the wrongful refusals to permit Northern to suspend operation and the wrongful orders to accelerate and increase manpower and equipment on the Project site, Marathon also threatened to blacklist Northern and remove it from future bidding lists in the industry unless it continued to increase manpower and equipment on the site and continued working under the force majeure and unanticipated and changed conditions.

32. Further, Marathon wrongfully threatened termination of the contract which would have damaged Northern's competitive standing and reputation in the industry.

33. That as a result of Marathon's wrongful threats, coercion and duress, Northern was forced to perform work under unanticipated winter conditions and force majeure changed conditions which resulted in damages to Northern in an amount presently estimated to be $1,474,602.44.

SEVENTH CLAIM FOR RELIEF

(Modification of Contract)

34. Realleges all of the allegations heretofore set forth as if specifically stated herein.

35. From the beginning of construction of the Project until its completion, Marathon repeatedly demanded that Northern continue performance in the face of winter conditions, force majeure and changed conditions, knowing full well that Northern's continued performance required substantially increased costs of doing the work. Marathon further indicated at the time of its repeated work demand that consideration of additional compensation for Northern's substantially increased costs would be deferred until the construction was completed.

36. Northern relied upon Marathon's continued assertions that should Northern continue to work on the job, the issue of additional compensation would be resolved at a later time and further understood that the contract provisions relative to compensation for extra work and changed conditions had been waived or modified.

37. Upon completion of the Project work, Marathon has refused to provide Northern with additional compensation, contrary to the modified contract and in breach of its warranties and representations. As a result of Marathon's breach of the modified agreement and its misrepresentations, Northern has suffered damages in an amount presently estimated to be $1,474,602.44, which Marathon is estopped from denying payment of as due and owing.

EIGHTH CLAIM FOR RELIEF

(Consequential Damages)

38. Realleges and incorporates by reference herein all of the foregoing paragraphs as though specifically stated.

39. As a result of Marathon's refusal and failure to perform under the contract and as a result of Marathon's breach thereof, Northern has sustained both general and special damages including, but not limited to, all extra costs, expenses and interest on the sums claimed in Claims One through Seven above, but also losses occasioned by the forced pledging and sale of certain property and other adverse financial consequences caused by wrongful acts of Marathon, plus other general and special damages, all to Northern's damage in an amount presently estimated to be $1,000,000. Marathon's wrongful acts have included, but are not limited to, the following:

(a) Wrongful denial of an agreed contract remedy by refusal to allow suspension of operations under the "force majeure" provisions of the contract;

(b) Failure and refusal to grant appropriate time extensions for the performance of the contract.

(c) Failure and refusal to pay money due and owing under the contract in a timely fashion;

(d) Failure and refusal to approve and pay moneys due and owing for extra work and changed conditions;

(e) Wrongful assumption of management of the work, mismanagement of the same and interference with Northern's progress as follows:

(1) Acceleration orders.

(2) Inteference by Marathon with sequence of work.

(3) Failure by Marathon to perform its services in a timely fashion under the contract.

(4) Hypertechnical, erroneous and untimely inspections.

(5) Demoralization of Northern's crews.

(f) Other breaches not hereinabove specified in detail.

40. For such other, further and proper relief to which Northern may be entitled.

Dated this 24th day of March, 1980.

BRIGGS AND MORGAN

By /s/ David L. Mitchell
JOHN L. DEVNEY
DAVID L. MITCHELL
Attorneys for Debtor/Plaintiff
2200 First National Bank Building
Saint Paul, Minnesota 55101
Telephone: (612) 291-1215

SUPREME COURT OF THE UNITED STATES

No. 81-150

NORTHERN PIPELINE CONSTRUCTION CO., APPELLANT

v.

MARATHON PIPE LINE COMPANY and UNITED STATES

Appeal from the United States District Court
for the District of Minnesota

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. The case is consolidated with case No. 81-546, *United States* v. *Marathon Pipe Line Co., et al.*, and a total of one hour is allotted for oral argument.

November 9, 1981

SUPREME COURT OF THE UNITED STATES

No. 81-546

UNITED STATES, APPELLANT

v.

MARATHON PIPE LINE CO., ET AL.

Appeal from the United States District Court
for the District of Minnesota

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. The case is consolidated with case No. 81-150, *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Company and United States*, and a total of one hour is allotted for oral argument.

November 9, 1981

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